STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Executive Laser Wash, Appellant, **v.** **Warren County Board of Review,** Appellee.	**ORDER** **Docket No. 13-91-0369** **Parcel No. 48-860-00-1116**

On November 24, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Executive Laser Wash was represented by attorney Jason Craig of Ahlers & Cooney, PC, Des Moines. The Warren County Board of Review was represented by attorney Brett Ryan of Watson & Ryan, PLC, Council Bluffs, Iowa. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Executive Laser Wash (Executive) is the owner of a commercial car wash located at 800 N Jefferson Way, Indianola, Iowa. The property was built in 1994, has seven-bays: four automatic and three manual, and is 5200 square feet. It sits on a 1.302-acre site. The site was formerly a fuel station, and auto service/repair shop. At that time, it had five underground storage tanks (UST), which were removed in 1991.

The subject property's 2011 assessment was $631,700. Executive appealed that assessment and this Board reduced the value to $430,000. In 2013, the property was revalued at $594,600, representing $397,000 in land value and $197,600 in improvement value. Executive protested the 2013 assessment to the Board of Review on the grounds that the property was not equitably assessed

compared to other like property; that the property was assessed for more than authorized by law; there is an error in the assessment; and there is fraud in the assessment under Iowa Code sections 441.37(1)(a)(1), (2), (4), and (5). It attached a summary of grounds to its Board of Review petition explaining its claims and giving a history of the property and its current environmental status. The Board of Review granted the protest, in part, and reduced to assessment to $535,100 by applying a 15% adjustment to the land value due to the environmental contamination.

Executive then appealed to this Board on the same grounds and provided a statement explaining its claims. Its error claim essentially asserts the property is over-assessed. On its appeal form, Executive asserted the property's correct assessment was $430,000.

Amir Jeshani, owner of Executive, testified at hearing. Jeshani explained an oil business previously owned the subject property and financed it through the Small Business Administration (SBA). The business went bankrupt and Jeshani subsequently purchased the property from the SBA in 1994. At the time of purchase, it was rated with a low risk of environmental contamination as SBA had begun a cleanup caused by leaking underground storage tanks (LUST). Jeshani testified that he spent $100,000 for the Department of Natural Resources (DNR) required site assessment and installation of monitoring wells. Ten years passed without incident. Then in 2004, the city ran a plastic water line through the right-of-way on the subject property. As a result, the DNR relisted the property as a "high risk" LUST site. (*See also* Exhibit C).

Jeshani reported that in August 2013 the DNR sent a letter to him requesting access to the property to conduct tests. (Exhibit 14). This letter describes a number of items that could impact the utility of the property on a spectrum – from testing that would have minimal impact to installation of monitoring wells, which may have a greater impact. The letter notes any associated costs for this would come out of the UST Fund, but that the fund has the authority to undertake recovery of these costs, including placing a lien on the real estate. Jeshani testified he wanted assurance that he would

not be responsible for the costs of remediation. He testified that he has yet to receive such an assurance. In Jeshani's opinion, the risk and uncertainty involved in buying and securing financing for a contaminated property reduces it value.

Jeshani testified about communications between the DNR and his attorneys regarding remediation liability. In a June 13, 2014 letter to Jeshani's attorney, the Deputy Administrator of the Iowa Underground Storage Tank Fund indicated that Jeshani was not considered to be a "responsible party" for the contamination and, pursuant to Board policy, cost recovery efforts would not be pursued against him for corrective actions. (Exhibit C).

In a June 17, 2014 letter, DNR attorney Aaron Brees states that the DNR does not provide an enforceable assurance that would have the "effect of relieving a person of all present or future liability associated with the UST release(s) of concern." (Exhibit C). The letter also states that only the legally responsible party is liable for the cost of remediation and a buyer of an already contaminated site would have no liability unless it takes action that worsens the contamination. It suggests, however, that a new owner would still be responsible for monitoring costs. Lastly, the letter points out that owners of contaminated sites that are not legally responsible for the contamination are statutorily protected from third-party lawsuits. § 455B.751. We note the relevant date of valuation in this appeal is January 1, 2013, and the events described by Jeshani and the letters concerning Executive's liability for contamination occurred well after the assessment date.

Jeshani reported a June 2014 mortgage on the subject property was part of a $3 million loan to his corporation to build a new car wash in Ankeny. (Exhibit G). The mortgage, in effect, made the subject property collateral for the new construction loan, along with his life insurance, and other properties owned by his corporation. The Board of Review submitted a 2014 appraisal completed by appraiser Ted Frandson of Frandson and Associates, Des Moines, Iowa as part of the new car wash

financing. (Exhibit F). The mortgage and appraisal are well past the January 1, 2013, assessment date and we give them no consideration.

Jeshani also testified the building is insured for $1,146,496 at its replacement cost, which automatically increases with each renewal. (Exhibit I). This value is not adjusted for depreciation and we find it does not represent the fair market value of the improvements.

In support of his inequity claim, Jeshani identified another car wash in Indianola located at 504/506 Jefferson with a land assessment of $5.00 per-square-foot (Exhibit 10), while the subject land is assessed at $7.00 per-square-foot (Exhibit 9). He also finds it inequitable that his property assessment increased, while other commercial properties in Indianola decreased. (Exhibit 11).

Finally, Jeshani believes it was harassment for the Assessor to increase his assessment after the PAAB had just reduced it, especially without an appraisal to support its value. Jeshani reported the Board of Review reduced the assessment, over the Assessor's recommendation it not be reduced. It is also his belief the Board of Review met privately with the Assessor and without his attorney present to discuss its decision. The Warren County Assessor Brian Arnold denied any non-public Board of Review meeting took place.

Executive also submitted a series of emails beginning on June 27, 2013, between Arnold and Shelly Nellesen, an Environmental Specialist and DNR project manager for the subject site. (Exhibit 12). Nellesen requests property transactions dating back to 1989 in an apparent attempt to identify the responsible party for the site contamination. Although these emails occurred after the assessment date, they indicate the first instance of the DNR's renewed interest in the property's contamination status. Neither party submitted any evidence suggesting the DNR had expressed a renewed interest in the property prior to June 27, 2013.

Ted Frandson, appraised the subject property as of January 1, 2013, for Executive and testified at the hearing. (Exhibit E). In summary, Frandson initially valued the subject property at $830,000.

This value, however, includes the value of machinery and equipment and considers the property with no environmental contamination. Frandson also concluded a market value for the subject property after deducting the value of the machinery and equipment and accounting for the existing environmental contamination on the property. To reflect the environmental contamination, he made a 25% adjustment. His final conclusion of value for the subject property is $450,000, as of January 1, 2013.

Frandson conducted all three approaches to value.

Frandson first valued the subject property using the cost approach. To determine a land value, Frandson chose four land sales of property located along N. Jefferson Way in Indianola. The majority of these sales are dated; three occurred between June 2005 and June 2009, and the fourth occurred in February 2011. However, Frandson made adjustments (5% to -20%) to the older sales for time. Frandson stated he also adjusted the sales for location and size. He concluded a value of $7.25 per-square-foot for the site and a total site value of $411,000 (rounded).

Frandson then determined the replacement cost for Executive's improvements using *Marshall and Swift Valuation Service*. He determined the total estimated accrued depreciation for the building was 72% and depreciated the other site improvements at 80%. Including the equipment value, he arrived at a total depreciated cost of improvements of $430,499. Adding this value to the land value, Frandson concluded a cost approach value of $841,000 (rounded).

Frandson's sales comparison approach examined four sales of car washes in Iowa. Two sales were in Indianola, one sale was in Polk City, and the final sale was in Johnston. Three of the sales were recent, occurring between June 2009 and November 2012. The fourth sale occurred in September 2004. Frandson noted he considered the sales on a price-per-bay basis and used this price-per-bay basis to establish the subject's improvement value. He testified this method was reasonable for a car wash property rather than a price per-square-foot. Frandson's adjusted range of value per-bay

was between $99,450 and $118,400. Using a per-bay value of $115,000, he concluded a value of $805,000 by the sales comparison approach.

Finally, Frandson completed an income approach to value. He used market rates from two other car washes in Indianola. He testified car wash income varies depending on the weather, management, and competition entering or leaving the market. Frandson noted the subject property had no new competition and favorable weather resulting in higher income in 2012. The appraisal notes the two comparable automatic wash facilities are inferior to the subject in terms of quality and wash features. However, he finds the subject's wash pricing is in line with competing washes (ranging $6.00 to $9.00) even though it offers additional features and has higher quality automatic equipment. Frandson also examined annual washes and revenue per wash. He considered both fixed and variable expenses. He concluded a net operating income (NOI) of $115,044, capitalized it at 13.58%, and arrived at an income approach value of $847,000 (rounded).

Frandson reconciled the approaches and arrived at a value of $830,000. As previously noted, this value included exempt machinery and equipment and did not account for the environmental contamination. Frandson testified the 25% he applied for the environmental contamination was a difficult figure to determine regardless of who is responsible for the cleanup. He testified it was common in the profession to give a "stigma discount" recognizing the market reaction to the contamination. While the Board of Review only applied a discount for contamination to the land, Frandson testified the discount should be applied to the total property value of both land and improvements.

Frandson testified that because the DNR has expressed a renewed interest in the condition of the site and potential need for additional remediation, the risk of the subject property's ownership has increased. There is uncertainty in not knowing what a cleanup will entail and what it will cost. Thus, he increased the 15% contamination discount he applied in a 2011 appraisal of the subject to 25%.

Frandson explained it is not appropriate to simply deduct the cost of cleanup from the property value of a contaminated property, an unknown in this case, to arrive at its market value. A new buyer would consider these cleanup issues. He testified part of the problem with contaminated property is that banks will not loan money on them and often require liens on the borrower's other property to secure the loan. Regardless of who is liable for the cleanup, the property is worth less if it is contaminated. Frandson testified a "benchmark" he would recognize, which would give him more comfort about the site, even though it was not "clean" yet would be a "No further action required" designation. Frandson testified his adjustment was based on the assumption Executive would not be responsible for cleanup.

We find the increase in Frandson's contamination adjustment from 15% to 25% is based on events that occurred after the relevant assessment date of January 1, 2013. As a result, we find that Frandson's adjustment should be reduced to 15%, resulting in final value conclusion of $533,700 (rounded).

Warren County Assessor Brian Arnold testified on behalf of the Board of Review. Arnold noted in setting the 2013 assessment, he reviewed the LUST folder and the 2003 DNR assessment of the subject property. From this review, he determined the contaminated portions of the site are underneath the parking lot, not under the building. Based on the assumption that present and future owners would face no financial liability for assessment or remediation, he believes the site value should not be discounted. Despite the PAAB Order, Arnold concluded the subject property should not have any discount for contamination. He reassessed the property, eliminating any contamination adjustment and increased the 2013 value. Arnold reported the surrounding properties' assessments went down because a city-wide 5% reduction was applied to all commercial properties including the subject. Arnold denied any allegation that the Board of Review met in a non-public meeting after the first Board of Review hearing to consider Executive's protest.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id*. The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value as of January 1 of the year the assessment is made. Iowa Code §§ 441.21(1)(a); 441.46; Iowa Admin. R. 701-71-21.2. Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id*. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id*. If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Fraud Claim

While Executive claimed there was fraud in the assessment, we find the evidence presented was conflicting and insufficient to support this claim.

Equity Claim

To prove equity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport,* 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (1965). The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Executive provided evidence to show its land assessment was quite different from the land value of another car wash located nearby. However, we conclude that Executive's evidence is not sufficient to prove inequity in the assessments under the *Eagle Food* or *Maxwell* tests.

Over-assessment Claim

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton,* 529 N.W.2d 275, 277 (Iowa 1995). It is clear there is substantial uncertainty and risk inherent with the ownership of this property. The stigma associated with this type property is well recognized and difficult to quantify. On the other hand, remediation is the actual costs to clean up a contaminated property for both on-site contamination and off-site impacts and it is distinct from stigma. *The Appraisal Institute, The Appraisal of Real Estate,* pp 212-213 *(14th ed. 2013).*

> Stigma is an adverse public perception regarding a property, commonly the identification of a property with a condition such as environmental contamination . . . and may also result in a diminution in value . . . Environmental contamination such as a leaking underground storage tank is one of the most common causes of stigma . . .

> have the potential to create a market perception that lowers value . . . Measuring the effect of stigma on value can be difficult because the damage caused by stigma is not simply the cost to repair a defect. *Id. pp 212-213.*

In *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275 (Iowa 1995), the Iowa Supreme Court examined the impact of groundwater contamination on the assessment of a property. The court stated that "environmental contamination will have some adverse effect on the value of the contaminated property" and noted that Iowa law requires assessors to consider any factor that may affect market value. *Id*. at 278 (citing *Barlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 88 (Iowa 1997). The court held that the assessor must consider the contamination of the groundwater under the property as a factor in its valuation. *Id*.

The Board of Review argues that because the DNR has provided assurances that the current owner is not a "responsible party" and neither the current property owner nor any future property owner will be responsible for the costs of remediation, there is no impact on the property's value and the Board of Review assessment should be affirmed. The Board of Review also contends the Appellant has provided no market data to support a contamination discount; let alone an increase in the contamination discount for the January 1, 2013, assessment date.

Executive contends that the Board of Review cannot justify its argument based on events and information, including the 2014 appraisal and DNR letters, which occurred after the assessment date. It argues there have been no changes to the property since PAAB's last decision that would justify an increase of the property's value to $535,100 and Executive asks the Board to set the property's assessment at Frandson's valuation of $450,000.

We find there is a sufficient logical and legal basis for the conclusion that a property's fair market value may be impaired both by the actual contamination that exists on the property as well as the stigma that attaches to a property that is or has been contaminated. The initial 2013 assessment

failed to account for either. Despite Arnold's testimony before PAAB, the Board of Review apparently agreed that a contamination adjustment was appropriate and applied a 15% adjustment to the subject property's land value. That adjustment was consistent with Frandson's testimony and appraisal in Executive's 2011 property assessment appeal before PAAB.

In this case, Frandson testified that a 25% adjustment was warranted because of the DNR's renewed interest in the subject property's contamination. The evidence before PAAB demonstrates that the DNR did not indicate its renewed interest in the property until, at the earliest, June 2013, well after the relevant assessment date of January 1, 2013. Prior to this, the testimony and exhibits suggest the DNR had not contacted Executive concerning the contamination since 2004. We note that neither Executive's protest to the Board of Review nor its Notice of Appeal to PAAB indicate the DNR had expressed a renewed interest in the property. As a result, it appears Frandon's adjustment increase from 15% to 25% is based entirely on events that occurred after the relevant assessment date. Therefore, we conclude that Frandson's appraisal should be modified to reflect a 15% contamination adjustment, which results in a final value conclusion of $533,700 (rounded).

Viewing the evidence as a whole, we determine the preponderance of the evidence supports Executive's claim of over-assessment as of January 1, 2013. We, therefore, modify the Executive's property assessment as determined by the Board of Review.

THE APPEAL BOARD ORDERS that the January 1, 2013, assessment of the Express property located at 800 N Jefferson Way in Indianola, Iowa, determined by the Warren County Board of Review is modified and assessed at $533,700.

Dated this 13th day of February, 2015.

Jacqueline Rypma, Presiding Officer

Stewart Iverson, Board Chair

Karen Oberman, Board Member

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